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(By Email only)

4th January 2024

Dear Kenneth Stone

Planning Act 2008 - Application by Gate Burton Energy Park Limited, for an Order Granting Development Consent for the Gate Burton Energy Park

Deadline 7 Submission

On 27 February 2023, notice was given that the Secretary of State has accepted an application by Gate Burton Energy Park Limited (company number 12660764) of Stirling Square, 5-7 Carlton Gardens, London, United Kingdom, SW1Y 5AD (“the Applicant”) for a Development Consent Order (DCO) under the Planning Act 2008. The Application (Reference No. EN010131) was submitted by the Applicant to the Secretary of State c/o the Planning Inspectorate on 27 January 2023 and was accepted on 22 February 2023.

The Applicant seeks authorisation for the construction, operation and maintenance and decommissioning of a solar photovoltaic (PV) electricity generating facility and energy storage facility, based in Lincolnshire, with a total capacity exceeding 50 megawatts (MW) and export connection to the National Grid (“the “Project”).

This document comprises the MMO’s Deadline 7 response in respect to the above DCO Application.

This is without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. This is also without prejudice to any decision the MMO may make on any associated application for consent, permission, approval or any other type of authorisation submitted to the MMO either for the works in the marine area or for any other authorisation relevant to the proposed development. The MMO reserves the right to modify its present advice or opinion in view of any additional matters or information that may come to our attention.



Yours sincerely,



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1. Summary Statements

The MMO has reviewed the DCO and Deemed Marine Licence (DML) (REP5-017) on a without prejudice basis and, as per our Deadline 6 response dated 21st December 2023, along with reaffirming our position on the inclusion of a DML, has provided comments on the wording within the DCO and DML where this would fall within the MMO's remit as the regulator under the Marine and Coastal Access Act 2009 (2009 Act). The MMO still has major concerns in relation to the inclusion of a DML.



2. Comments on any additional information/submissions received by Deadline 6

2.1 In the MMO Deadline 6 response dated 21st December 2023, we stated that we would address two points further at this response deadline, and we have set our comments out on these below.

2.2 a). Licensable Activities and Procedure:

It is essential that all activities are properly detailed and full particularised in the development consent order for the purposes of a deemed marine licence. The MMO note that in the Applicant's response to Further Written Questions (ExQ2) [REP4-046] the Applicant has detailed why they do not require an Environmental Statement (ES).

2.3 Whilst the applicant provided an Environmental Statement, following the MMO request that they include a marine environment chapter per the standard practice, the applicant stated in its technical note (EN010131/APP/8.18) that they consider that the relevant impacts relating to the marine environment are already assessed in the ES and therefore, that there is sufficient information available to inform a Deemed Marine Licence (DML) if required.

As detailed in our Deadline 4 submission, dated 29th September 2023, if a DML is included, it is standard practice for an ES to include a Marine Environment chapter that states how the applicant has assessed any potential impacts. The Marine Environment chapter should also assess the impact of the worst-case scenario and the applicant did not produce one despite the MMO's request. Worst-case scenarios within other chapters relating to the marine environment appear not to have been properly assessed, such as via the consideration of worst-case scenario methodology. Consequently, the MMO has not received any clarity with regards to worst-case scenario methodology for any marine licensable activities that are not covered by an exemption.

2.4 b) REP5-049 Deadline 5 Submission - 8.30 Response to Rule 17 Letter - Request Re HDD and Cabling under the River Trent:

Within this, the applicant addresses questions relating to potential issues arising during construction or operation, a risk assessment of environmental effects to the marine environment, how the applicant would address such an incident and whether such interventions if required are covered by the Deemed Marine Licence. The applicant's response does not provide any clarity for the MMO with regards to specific marine licensable activities which are not exempt and therefore does not in any way change the MMO position on this project.

2.5 The applicant submitted a technical note in response to the Examining Authority's Rule 17 letter regarding a Request for Further Information on horizontal directional drilling (HDD) and associated cabling under the River Trent. The MMO response to the applicant's responses to the Examining Authority's request is set out below, under each bullet point in turn.

The Request: *'I refer to the Deemed Marine Licence, which is currently included in the draft Development Consent Order, and the Grid Connection Construction Method Statement [APP-114] which sets out the methodology to be employed for Horizontal Direct Drilling (HDD). This does not appear to include potential for issues or problems arising during*



construction or operation e.g the HDD being stuck during drilling or cabling during pulling through, such that may require intervention including seeking to directly access the bored tunnel to retrieve the Drill head etc potentially including digging a pit within the exclusion zones or requiring access pits if there is a failure of the cable during operation. I require the Applicant and MMO to consider and comment with reasoning on the following:

Bullet point 1: Whether such a scenario has been considered and assessed including the potential likely environmental effects that may result and where this is addressed in the Environmental Statement.

MMO comment on applicant response:

The applicant has considered potential issues arising during construction or operation such that may require intervention within Chapter 9 of the ES [APP-018]. However, the MMO believe that it is still unclear as to what is marine licensable and what would happen if anything were to go wrong. The potential issues which the applicant has stated could arise do not relate to any marine licensable activities. Therefore, the MMO has remained unable to review and consult on this.

Bullet point 2: If it has not, the Applicant to provide a risk assessment along with any necessary assessment of environmental effects to the marine environment that may follow and identify any mitigation measures that would be necessary.

MMO comment on applicant response:

The applicant has stated that they will provide a Construction Environmental Management Plan (CEMP). If this is in relation to marine activities, this should be included as a condition within the DML, which would need to be submitted to the MMO. Details of what this condition may look like are included below in the Conclusion at section 3.

Bullet point 3: How would the Applicant address such an incident without carrying out works within the area that may be within the exclusion zone for the River Trent.

MMO comment on applicant response:

The Outline Design Principles [REP4-005] should be clear and as part of this, it should be clear as to whether or not there is an impact to marine licensable activities which it currently does not appear to demonstrate.

Bullet point 4: Are such interventions if required covered by the Deemed Marine Licence or would further description need to be included within the DML.

MMO comment on applicant response:

The applicant has stated that the activities would be authorised by the DML and has also suggested a new condition as part of this regarding an emergency response plan for the DML. Further information would be required as part of this, including what marine licensable activities intervention may entail. All activities need to be clear within any DML and all conditions must relate to those activities. For example, with regards to decommissioning, a decommissioning plan needs to relate to specific activities, even if exact methodology is as yet unknown; in this situation, we would expect to see details of a worst-case scenario.

The MMO remain unclear on what licensable activities are as part of this DCO, including decommissioning.



Bullet 5: The MMO has suggested the Applicant could apply for a standard Marine licence if the previously suggested exemption was not available at the point of construction how would this affect the Applicant's development timetable in terms of time and cost in a standard HHD operation where no incidents arose. Also, if such a scenario as described above in the context of failure of the drilling or cabling arose to what extent would a requirement to apply for a Marine Licence add to the delay and potential costs and would this affect the viability of the scheme.

MMO comment on applicant response:

The applicant has stated that in both scenarios, if the DML is not granted and the exemption was not available, the Applicant would apply for a marine licence pursuant to the Marine and Coastal Access Act 2009 prior to construction.

If a DML is not included as part of this DCO, the MMO would be content for the applicant to submit an enquiry and then discuss the impacts of proposed works and obtain the required detail, and then follow up, where appropriate, with a marine licence for all eventualities.

Bullet point 6: The MMO to comment specifically on how the abovementioned failure scenario would affect its position in respect of the necessity for a DML and any conditions that would be required and whether such ancillary activities would be covered by the previously identified exemption.

MMO comment on applicant response:

The applicant stated they would review the MMO's response to this and respond accordingly, and if necessary, at Deadline 6. It is unclear whether the applicant has responded on this item.

Bullet point 7: Should the DCO not include a Deemed Marine Licence what would the MMO's expected decision time on an application for a standard marine licence be.

MMO comment on applicant response:

The MMO aim to make a decision on most marine license applications within 13 weeks of an application being validated. However, each application is different, and some applications will take longer than this, while others will take less time.



3. Conclusion

The MMO would like to point out that everything that has been detailed in the above, in terms of what else is required from the Applicant, is not necessarily an exhaustive list and would be dependent on sufficient details of activities being provided.

Until the MMO understand what activities the Applicant is trying to plan for under MACA, we can't advise whether the information provided to date is suitable for an assessment to be made. The MMO also can't assess whether the conditions are appropriate for any DML. Until we have all of this information, we can't make an assessment and we would advise that a DML is not included.

As detailed above, if a DML is not included as part of this DCO, the MMO would be content for the applicant to submit an enquiry and then discuss the impacts of proposed works and obtain the required detail, and then follow up, where appropriate, with a marine licence for all eventualities.

In our response to Deadline 6 dated 21ST December 2023 we provided without prejudice comments on DML conditions. If the MMO was in possession of all the specific details of marine licensable activities which are not covered by an exemption, it would be able to determine whether other conditions may also be required.

Whilst we do not agree with the DML based on the information which has been provided to date, if, the Secretary of State is minded to approve the DML, a Construction Environmental Management Plan (CEMP) condition would need to be added.

This is not likely to be the only condition that would be required, and the details of all other conditions would only be known if sufficient information was provided. The wording of a CEMP condition may include, but not necessarily be limited to, the below:

- (1) No part of the authorised development may commence until a construction environmental management plan has been submitted to and, after consultation with the relevant regulators, approved by the relevant planning authority.*
- (2) The plan submitted and approved must be in accordance with the framework construction environmental management plan and the indicative landscape and biodiversity strategy and incorporate—*
 - (a) a code of construction practice, specifying measures designed to minimise the impacts of construction works;*
 - (b) a scheme for the control of any emissions to air;*
 - (c) a soil management plan;*
 - (d) a sediment control plan;*
 - (e) a scheme for environmental monitoring and reporting during the construction of the authorised development, including measures for undertaking any corrective actions;*
 - (f) a scheme for the notification of any significant construction impacts on local residents and businesses for handling any complaints received relating to such impacts during the construction of the authorised development;*
 - (g) a groundwater monitoring plan that comprises monitoring of groundwater levels and chemical contaminants of concern to inform the construction design process and which must take into account the updated hydrogeological impact assessment and any further ground investigation reports and groundwater monitoring required by requirement*



13(2)(f);

(h) a materials management plan in accordance with paragraph 5.3.76 of chapter 5 of the environmental statement;

(i) a hazardous materials management plan in accordance with paragraph 10.5.3 in Chapter

10 of the environmental statement; and

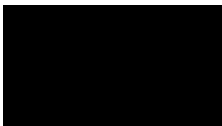
(j) any other management or mitigation plans set out in the framework construction environmental management plan.

(3) All construction works associated with the authorised development must be carried out in accordance with the relevant approved construction environmental management plan unless otherwise agreed with the relevant planning authority.

Without all relevant information, we are unclear as to what further conditions need to be added and we are therefore unable to provide advice on this and have not been able to consult with the relevant statutory bodies. If the correct conditions are not included, this would mean that our enforcement powers, including monitoring inspections, to ensure compliance, would be undermined.

Despite repeated requests for clarity and further information, the MMO remain unable to see either a scenario in the current methodology describing any marine licensable activities which are not exempt, or any specific details of any potential for issues or problems arising during construction or operation. It is for that reason, and those outlined above and in all our previous responses, that the MMO do not support the inclusion of a DML as part of this DCO.

Yours sincerely,



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...ambitious for our
seas and coasts

